



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Regarding Policies,
Procedures and Rules for the California Solar Initiative,
the Self-Generation Incentive Program and Other
Distributed Generation Issues.

Rulemaking 06-03-004
(Filed March 2, 2006)

**REPLY COMMENTS OF FAT SPANIEL TECHNOLOGIES, INC. AND
ENERGY RECOMMERCE, INC. ON
OPINION MODIFYING DECISION 06-08-028 REGARDING
INDEPENDENT PERFORMANCE MONITORING AND
REPORTING REQUIREMENTS**

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January 14, 2008

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Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the performance monitoring and reporting services ("PMRS") providers Fat Spaniel Technologies, Inc. and Energy Recommerce, Inc. submit the following reply comments regarding the Proposed Decision ("PD") of Commissioner Peevey.¹ In addition to Fat Spaniel Technologies, Inc. and Energy Recommerce, Inc., the following companies all support these comments: CSS-Technologies, Draker Laboratories (fka Draker Solar Design, LLC), Glu Networks, PowerNab, and Pyramid Solar (jointly hereafter the PMRS Providers).²

I. Independence

The PMRS Providers take exception to the claims by the Joint Solar Parties ("JSP") that the removal of the independence requirement will reduce costs. Such statements are mere allegations and are unsupported by evidence in the record. Accordingly, they are insufficient for modifying D.06-08-028.

¹ Energy Recommerce, Inc. has authorized the undersigned to sign these comments on its behalf, pursuant to Commission Rule 1.8(d).

² All the named parties have assented to their inclusion in these comments.

Further, while the PMRS Providers agree with the JSP that rigorous standards can help ensure data integrity, standards alone are insufficient to protect data integrity for a \$3 billion program. Data integrity is the assurance that data is consistent and correct. The PDP requirements do help on this front. But even the most rigorous standards can not prevent the compromise of data integrity due to intentional altering of results.

As stated in previous comments, the Security and Exchange Commission (“SEC”) and the Financial Accounting Standards Board (“FASB”) put forth rigorous standards to ensure the integrity of the data supporting investment decisions. Yet, as has been seen time and again in financial transactions, rigorous standards are insufficient to prevent data from manipulation by interested parties. It is only through the additional protection afforded by independent entities that the highest level of assurance can be reached. The ratepayers of California and the owners of Performance Based Incentives (“PBI”) and Expected Performance Based Buydown (“EPBB”) funded photovoltaic (“PV”) systems deserve no less.

Lastly, to the extent that the Commission moves forward with removing the independence requirement it should heed the concerns expressed by both SCE and the PMRS Providers. In its comments SCE stated “SCE knows of no similar utility program that permits significant monthly payments to customers based on self-reporting of data.” The PMRS Providers raised the same concern in their opening Comments to the PD. (Comments of Fat Spaniel Technologies, et al., at p. 3.) Allowing the beneficiaries of this high-profile subsidy program to self-report deviates from years of Commission policy and will set a dangerous precedent. However, the PD provides no policy basis for doing so. The Commission can avoid unnecessary issues of conflict of interest, self-dealing and inadequate oversight by at least barring beneficiaries from reporting their own data. Accordingly, if the independence requirement is removed from the CSI Program,

the Commission should still prevent recipients of CSI funds from self-reporting PBI data on systems in which they have a beneficial interest even if they meet the PDP requirements.

II. Timeframe for Final PDP Requirements

Both Pacific Gas & Electric Company (“PG&E”) and California Center for Sustainable Energy (“CCSE”) echoed the PMRS Providers’ concern that timeframe outlined in the PD for completion of the Performance Data Provider (“PDP”) qualifications is aggressive and that additional time will most likely be needed to appropriately accomplish this task. However, while the PMRS Providers are confident that the process can move forward quickly we are hesitant to ascribe a hard and fast deadline to this important rulemaking activity – even if extended by an additional 30 days as requested by PG&E and CCSE. Accordingly, while the PMRS Providers agree that 60 days from the adoption of this PD is a reasonable timeframe for convening workshops, we still request that the deadline for filing the advice letter be dropped from the PD and full discretion be granted to the Energy Division (“ED”) and the ALJ to file an improved PDP Proposal when an effective proposal is ready. Such a change would merely make official and remove any ambiguity with respect to the authority already granted to the ALJ and ED as per the following text of Ordering Paragraph #5: “The assigned Administrative Law Judge has the authority to modify this schedule and Energy Division may refine the workshop agenda, as set forth in this decision.”

III. Interim PDP Requirements

The PMRS Providers have reviewed the Interim PDP Requirements submitted by both PG&E and CCSE and agree with these modifications. They seem to reflect the practices now in place and currently followed by PMRS providers currently providing data services. These requirements should be incorporated into the PD as applicable, interim PDP requirements at both

PG&E and CCSE. However, these requirements should not wholly replace the red-lined version submitted by the PMRS Providers as the red-lined version contains additional and important information that is not included in the versions from PG&E and CCSE. Further, while both PG&E and CCSE reference spreadsheets, neither of the submitted revised versions contain examples of these spreadsheets. Accordingly, in order to avoid confusion and delays in payment, it is critical for the Commission to adopt the examples of these spreadsheets put forth by the PMRS Providers in our initial comments to this PD.

IV. Ability to Modify Interim PDP Requirements

The PMRS Providers believe that the Interim PDP Requirements as modified by the comments of PG&E, CCSE, Southern California Edison Company (“SCE”) and the PMRS Providers need no major modifications. However, minor modifications may be needed. For example, the PAs may wish to modify the email addresses to which data is being sent from those currently appearing in the Interim PDP Requirements as stated. However, apart from such minor examples no other modifications should be allowed on an interim basis.

Major modifications should be the subject of the upcoming workshop. Revisions to PDP requirements cost the PMRS Providers money to implement, cause time delays in processing data, and upset CSI Participants with additional paperwork burdens. Major modifications on a short term basis have the potential to harm the businesses of the PMRS Providers and sow confusion. And perhaps most significantly, at least one PA has now applied with the Commission to provide PDP services.³ No PA with an interest in providing such services should be given authority, even on a temporary basis, to re-write the rules for how such services must be

³ It should be noted that on December 19, 2007 PG&E filed an Advice Letter requesting approval of a contract by which to offer PDP services to CSI participants. See AL 3182-E.

provided. To do so would be to grant such utilities an unfair competitive advantage over their competitors.

Accordingly, the PMRS Providers request that while the PA should be granted the flexibility to make, with Energy Division oversight, minor modifications to the Interim PDP Requirements (i.e. in keeping with the example provided above) no changes of a more fundamental nature should be allowed.

V. Program Administrator Requirement to Make PBI Payments

While the comments of PG&E, CCSE, and SCE all reflect an agreement to remit PBI payments based on the Interim PDP Requirements there does not exist an affirmative statement by the PAs or requirement by the Commission that the PAs must actually make payments based on data submitted in accordance with these requirements. Indeed, Ordering Paragraph #3 of the PD merely requires “systems receiving performance-based incentives...to subscribe to performance monitoring and reporting service (PMRS) for the data stream to the Program Administrator....” While such an omission is most certainly an oversight it is an important one that requires correction. Accordingly, the PMRS Providers request that the following sentence be added to the end of Ordering Paragraph #3: “Upon the submission of data and by a party meeting the requirements set forth in Appendix A of this order Program Administrators are required to pay CSI rebates without delay.”

Dated: January 14, 2008

Respectfully submitted,

/s/

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Certificate of Service

I hereby certify that I have this day served a copy of “Reply Comments Of Fat Spaniel Technologies, Inc. And Energy Recommerce, Inc. On Opinion Modifying Decision 06-08-028 Regarding Independent Performance Monitoring And Reporting Requirements” on all known parties to R.06-03-004 by transmitting an e-mail message with the document attached to each party named in the official service list. Parties without e-mail addresses were mailed a properly addressed copy by first-class mail with postage prepaid.

Executed on January 14, 2008 at Sacramento, California

/s/
Eric Janssen

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R.06-03-004
January 14, 2008

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